



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SW

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/614,962 | 07/08/2003 | Vernon D. Karman | 4767-00016 | 8836 |

26753 7590 07/01/2004

ANDRUS, SCEALES, STARKE & SAWALL, LLP
100 EAST WISCONSIN AVENUE, SUITE 1100
MILWAUKEE, WI 53202

EXAMINER

KIM, EUGENE LEE

ART UNIT PAPER NUMBER

3721

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,962

Applicant(s)

KARMAN ET AL.

Examiner

Eugene L Kim

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-37 and 45-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-37 and 45-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3721

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 13, 16, 17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Keyes (EP 0261929). Keyes shows a method which includes a pasteurization station (fig 3) with the package going through a series of stations including a forming station 5, loading station 10 and pasteurizing the contents of the package by using steam pressure to fend off micro-organisms or mould. Examiner is interpreting the barrier film that is applied to the lid to read on a closing station that occurs after the pasteurizing step. (see abstract)

3. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keyes in view of Kageyama (#5,834,049). Keyes do not show the pasteurizing medium to be less than 5 seconds. However, Kageyama teaches the pasteurizing medium being 5-10 seconds (abstract). Therefore, it would have been obvious to one of ordinary skill in the art to provide Keyes with a

Art Unit: 3721

pasteurizing medium that lasts 5 seconds as taught by Kageyama to expedite the sterilizing process.

4. Claims 15, 18-37, 43-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keyes in view of McGowan, Jr (#5,749,203). Keyes substantially shows the claimed subject matter but do not show port means as claimed or closing after pasteurizing the food product. McGowan, Jr shows the method of using steam and sterilizing gas into a chamber sequentially or simultaneously (col 10 lines 55+) and also discloses that the gas may be introduced during the ventilation through ports 420, 428 or subsequently thereafter. Since there are numerous ports and the flow may be modified as described supra, it would have been obvious to provide different modes of pasteurizing medium as claimed depending upon the users preferences of pasteurizing the product. McGowan, Jr teaches the concept of having an upper and lower chamber 418, 424 with venting and supplying a pasteurizing medium at different locations. McGowan, Jr also shows pasteurizing the product and then closing the package. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide Keyes with ports and closing after pasteurizing as taught by McGowan, Jr to enhance the effect of a contaminant free product. Regarding the actual food product being pasteurized, Keyes discloses pasteurizing a food product and is fully capable of pasteurizing any type of food product including hot dogs. Regarding sterilizing the lid separately/independently, examiner takes official notice that this is well known in the art. Regarding the location of the pasteurizing medium in relation to the food

Art Unit: 3721

product as well as the location of the venting and pasteurizing medium, the examiner notes that it would have been an obvious matter of rearrangement of parts to shift the jet ports to different locations depending upon the actual product being pasteurized. See in re Japikse, 86 USPQ 70 (CCPA 1950). Regarding removing the condensate from the film, Keyes discloses removing condensate film from the surface by using an ultra-violet light (col 4 lines 15+). Keyes discloses subjecting the pasteurizing medium to a pressure of 15 p.s.i.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene L Kim whose telephone number is 703 308-1886. The examiner can normally be reached on Tuesday-Friday 8 a.m. to 6 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



EUGENE KIM
PRIMARY EXAMINER